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May 25, 2004

The Honorable William D. Wall
United States District Court
100 Federal Plaza
Central Islip, NY 11722

Re: ***Robert Novak v. Overture Services, Inc., et al.***
Case No. CV-02-5164

Your Honor:

Pursuant to Local Civil Rule 37.3(c), Defendant Google Inc. ("Google") hereby requests that the Court either order plaintiff Robert Novak to submit his initial disclosures to Google, or grant Google leave to seek such an order via formal motion. Mr. Novak has rejected and ignored informal requests that he supply the required disclosures, and they are now two weeks overdue. Unfortunately, Mr. Novak has refused even to state when the disclosures will be provided.

On April 27, 2004, Google's counsel and Mr. Novak participated in a telephone conference pursuant to Rule 26(f) of the Federal Rules of Civil Procedure. During the call and again in the proposed discovery plan Google submitted to the Court, Google's counsel expressly notified Mr. Novak that his initial disclosures would be due on May 11, 2004. Google then provided its initial disclosures but received nothing in return.

On May 17, 2004, Google wrote to Mr. Novak requesting a date on which his overdue disclosures would be forthcoming. Mr. Novak rejected that request. Google followed with another letter again requesting that Mr. Novak provide a date on which the initial disclosures would be delivered. Mr. Novak did not respond at all.

Mr. Novak was clearly aware that the telephone conversation that occurred on April 27, 2004 constituted a Rule 26(f) conference between the parties based on his subsequent written correspondence. He did not object during the conference to providing initial disclosures, and any such objection would have been meritless.

Mr. Novak has, however, attempted to justify his refusal to provide initial disclosures on two grounds. First, Mr. Novak has suggested that his pro se status means that Google should not expect him to honor court deadlines. While Google has made and will continue to make reasonable accommodations for Mr. Novak in light of his pro se status (though, as this Court has remarked, he is not a typical pro se), Google does not believe that such status entitles Mr. Novak to ignore applicable rules.

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Second, Mr. Novak has stated that he is entitled to provide initial disclosures to all defendants at the same time. He apparently believes that he may therefore delay making the required disclosures to Google until he is required to provide disclosures to other defendants. This too is misguided. Google and Mr. Novak have conducted their Rule 26(f) conference and Mr. Novak's initial disclosures to Google are overdue regardless of his dealings with the other defendants. This is particularly so as the Defendants in this case are not identically situated. The factual basis for Mr. Novak's claims and damages theories will differ significantly from defendant to defendant. Mr. Novak's initial disclosures to Google -- in particular his identification of relevant witnesses and documents and his damages calculation -- should be largely specific to Google. Accordingly, it makes little sense for Mr. Novak to tie his disclosure obligation to Google to those he owes to other defendants.

Mr. Novak filed this case nearly two years ago. He has had ample time to prepare his initial disclosures. There is simply no justification for his ongoing refusal to provide them. Google therefore requests that the Court order Mr. Novak to immediately provide his initial disclosures to Google or that it grant Google leave to file a formal motion seeking that relief.

Respectfully submitted,

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Attorneys for Google Inc.

cc: See Attached Service List

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